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Election 2016 Newsletter: Voting Law Challenges Head to Court

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Voting Law Challenges Head to Court in 2016

A federal judge upheld a series of restrictive voting laws in North Carolina last week, the first of several key voting rights cases on the docket for 2016.

Of the **17 states** with new voting restrictions in place for the first time in a presidential election this year, **nine also have major ongoing lawsuits** that could impact voting access before November.

North Carolina's law, passed shortly after the Supreme Court gutted the Voting Rights Act in 2013, reduced the early voting period, cut pre-registration for 16- and 17-year-olds, eliminated same day registration, and implemented a voter ID requirement. At trial, the court heard testimony from dozens of witnesses burdened by the strict new requirements, which caused confusion and long lines in the state's March primary. Lawyers for the plaintiffs made a motion to appeal the decision, which the appeals court quickly granted, and a hearing could come as early as July.

Battles continue in other states as well. In **Texas**, a hearing is scheduled for May 24 before the full Fifth Circuit Court of Appeals concerning the state's strict photo ID law. Last August, a three-judge panel upheld a prior ruling striking down the requirement, which found more than 600,000 registered voters do not have the kind of ID now needed. (The Brennan Center represents the Texas NAACP and the Mexican American Legislative Caucus in the case, along with other co-counsel).

The Center is also challenging proof of citizenship requirements in **Alabama**, **Georgia**, and **Kansas**, representing the League of Women Voters. These measures, allowed to go into effect by the Election Assistance Commission's executive director with little warning or explanation, require voters to provide documents such as birth certificates or passports when signing up using the federal registration form. A judge heard arguments in March on whether to block the requirement, and a ruling is expected soon.

Lawsuits are pending over strict photo ID laws in **Wisconsin** and **Alabama**. The Badger State's measure led to long voting lines in the April primary. Days later, a federal appeals court sent the case back to the lower court to re-examine accounts from voters who have struggled to obtain ID. In the south, NAACP LDF is challenging Alabama's law, which they contend impacts 280,000 voters. The state previously shut down 31 DMV offices due to budget cuts, making it even harder for voters in these counties (who are predominantly African-American) to secure ID.

The Democratic Party and others have also filed lawsuits challenging voting restrictions, including **Ohio**'s early voting cuts, **Virginia**'s voter ID law, and **Arizona**'s recent polling place closures.

This November could shape up to be a high-turnout election year — amidst a patchwork system of confusing voting rules. Read more about new voting laws in our interactive map.

Bob McDonnell Misreads the First Amendment

This year's record election spending didn't come out of nowhere — in large part, it resulted from the Roberts Supreme Court's evisceration of longstanding campaign finance law over the last decade. Now, in a case heard last Wednesday, the Court could make it even easier for wealthy interests to directly sway elected officials.

Last year, former Virginia Gov. Bob McDonnell (R) was convicted of 11 counts of corruption for accepting cash, luxury goods, and shopping sprees from businessman Jonnie Williams in exchange for using his office to advance Williams's business interests.

McDonnell appealed his case to the Supreme Court, essentially arguing he "had a First Amendment Right to trade political favors for a Rolex watch," **Brent Ferguson** wrote in *The American Prospect*.

"What's extraordinary here is how out of touch that is in an election season where both the Democratic Party and the Republican Party are convulsed, so many people are going in saying what Bob McDonnell did is ordinary politics," **Daniel I. Weiner** told *Politico*. "What's striking is how unreflective they seem to be about why we are where we are right now. … Comparing $175,000 in luxury gifts to a complimentary lunch or a plaque is surreal."

At oral argument, the Justices seemed open to some aspects of McDonnell's argument, wrote Slate's Dahlia Lithwick. But how they will rule, and the implications for campaign finance law, remains unclear. That raises important questions about how far the Court will go in allowing "self-dealing" by elected officials motivated by monetary gain.

The Brennan Center, with attorneys from the law firm Freshfields Bruckhaus Deringer US LLP, filed an amicus brief in the case, arguing McDonnell's claim is an egregious misreading of recent Supreme Court rulings.

"The case demonstrates how the First Amendment has begun to evolve from a tool to protect Americans with unpopular beliefs into a shield used by corporations and political donors to justify rules-free policymaking and electioneering," Ferguson noted.

Read more from Weiner at The Huffington Post.

From Our Experts

- **Automatic Voter Registration Goes Bipartisan:** This revolutionary policy can add millions to the rolls nationwide. Vermont just became the fourth state to pass it — and the second to do so with bipartisan support.

- **Two Years Later, McCutcheon Fuels Huge Checks to Politicians**: Prominent Republicans and Democrats alike are collecting six-figure checks this election cycle. What they all have in common: they would've been illegal two years ago. Ian Vandewalker explores.

- **Will Big Business Take a Pass on Party Conventions?** While corporations have a right to jump into this year's election melee, they may want to think twice, as partisan politics could hurt their brand, Ciara Torres-Spelliscy writes.

State Updates

Connecticut: The U.S. Justice Department launched an investigation into Connecticut's "motor voter" program, alleging the state is out of compliance with the National Voter Registration Act. A letter to Connecticut's attorney general notes that DMV offices were not transmitting voter registration information in a timely manner, among other violations. The Justice Department said it hopes to resolve the issue without litigation. "Everybody's going to work together to rectify" the situation, said Patrick Gallahue, a spokesman for Secretary of State Denise Merrell.

Georgia: The secretary of state's office is ending a voter registration "black out" period, where voter forms were not processed in the 90 days following the state's registration deadline. The practice first began to ensure that those who registered after the deadline could not accidentally vote in the upcoming election. But this has become unnecessary as Georgia moved to an electronic system. Ending the black out allows more time for voters to correct inaccuracies and ensure they will be ready for the next election.

Kansas: Two-thirds of new voter registrations submitted during a three-week span in February are on hold, according to court filings via the ACLU, which they attribute to the state's proof of citizenship requirement. The law requires Kansans to provide documents, such as birth certificates or passports, when registering to vote. More than 22,000 applications were submitted, records show, and just 7,444 included citizenship documents. Most affected are citizens between age 18 and 29, who comprise 58 percent of the applicants on hold after registering at the DMV. The voters will be

removed from the list after 90 days if they don't submit the proper paperwork. The Brennan Center represents the League of Women Voters in a separate **suit challenging the law.**

New York: After the state's messy primary election this month, when more than 100,000 voters were inexplicably purged from the rolls in Brooklyn, New York City Mayor Bill de Blasio (who also faces a number of alleged campaign finance violations) announced he will make $20 million in "incentive funding" available if the city's election agency agrees to implement reforms like increased poll worker training and hiring outside experts to consult on and run the city's elections. More than 1,000 complaints poured in from across the state during the April 19 primary, most often from people who attempted to vote but were told they were not registered. In an op-ed for the *New York Daily News,* Brennan Center's **Jonathan Brater** wrote that "automatic voter registration and other upgrades are the biggest piece of the answer." Read more from **Victoria Bassetti.**

Virginia: Gov. Terry McAuliffe (D) signed an executive order restoring voting rights to more than 200,000 citizens with past criminal convictions. "What this will do is move Virginia, which was among the worst of the worst in terms of disenfranchising people, to a much more middle-of-the-road policy," **Myrna Pérez** told *The Washington Post*. State Republicans balked at the move, and will likely file a lawsuit contesting the governor acted outside the realm of his authority. See the Brennan Center's interactive map of criminal disenfranchisement policies and read more from Fellow **Andrew Cohen**.

Wisconsin: In a 4-2 vote, the Government Accountability Board asked the Wisconsin legislature for $250,000 for a voter education campaign to publicize the state's new photo ID law. This comes after Gov. Scott Walker (R) refuted the need for additional funds, saying high turnout in the April primary proves it's unnecessary. Kevin Kennedy, director of the Board, called Walker's statement "disingenuous." "The purpose of the campaign really is to say, you're going to need an ID, be prepared," he continued. "Here's where you can get more detailed information, because there's a lot of exceptions that a lot of people aren't aware about."

National Updates

- Republicans on the House Ways and Means Committee advanced a bill that would allow dark money groups to shield their identities from the IRS. In an editorial, *The New York Times* cited a letter from the Brennan Center and other groups decrying the maneuver.

- A report from *The Washington Post* found that 41 percent of the $607 million given to super PACs so far in 2016 came from just 50 mega-donors and their relatives.

- Republican Congressman David Jolly described his "Stop Act," which would prohibit members of Congress from directly soliciting campaign contributions, on "60 Minutes," sparking what *Politico* called "an intra-party feud between Jolly and the National Republican Congressional Committee."

- Attorney General Loretta Lynch advocated for simplifying the process for people with past criminal convictions to obtain state-issued ID after exiting prison. Having a photo ID will make it easier for returning citizens to get jobs, obtain housing, and to vote. Lynch's comments came at the start of National Reentry Week, and are part of a broad movement to improve the criminal justice system in America.

- Writing for the *Los Angeles Times,* author Andrew Gumbel hypothesized that voter ID laws could be this year's hanging chad, noting that swing states Wisconsin, Indiana, and Virginia have strict ID requirements and are often decided by razor-thin margins.

- The Supreme Court issued a unanimous decision in April in *Harris v. Arizona Independent Redistricting Commission*, reaffirming that compliance with the Voting Rights Act is a legitimate factor for states to consider when drawing district maps. Read more in the Brennan Center's Redistricting Round-Up.

- Rep. Hank Johnson (D-GA) introduced the Verifying Optimal Tools for Elections Act (VOTE Act), which would create a $125 million grant program to replace voting machines that will be at least 10 years old in this election and allocate funds for training and developing open source voting technology. Johnson, who cited the Brennan Center's "America's Voting Machines At Risk" report in a statement, is the first member of Congress to introduce a bill to address the looming voting technology crisis.